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| 10/741,793                  | 12/19/2003  | Alan E. Hairsine     | 32210.20.0          | 5589             |
| 22859                       | 7590        | 03/28/2008           | EXAMINER            |                  |
| INTELLECTUAL PROPERTY GROUP |             |                      | WEIER, ANTHONY J    |                  |
| FREDRIKSON & BYRON, P.A.    |             |                      |                     |                  |
| 200 SOUTH SIXTH STREET      |             |                      | ART UNIT            | PAPER NUMBER     |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/741,793             | HAIRSINE ET AL.     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Anthony Weier          | 1794                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 December 2007.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4, 12-14, 18-21, 24-68 and 71-79 is/are pending in the application.

4a) Of the above claim(s) 3, 4, 19, 27-54, 57 and 58 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1, 2, 12-14, 18, 20, 21, 24-26, 55, 56, 59-68, and 71-79 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. This application contains claims drawn to an invention nonelected with traverse in the reply filed on 2/20/07. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 55 and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimizu.

Shimizu (cols. 2 and 3) discloses a process wherein eggs are mechanically and automatically conveyed (e.g. col. 1, lines 51-55; col. 2, lines 8-13; col. 3, line 30- col. 4, line 8) and subjected to breaking with cutters (8; i.e. knives) wherein the contents of same (including yolks) are deposited into a plurality of molds (each having a symmetrical and rounded outline) all connected (the outer molds providing a closed loop of the plurality) wherein said molds have a first depression with a second depression disposed inside the first (thus providing an irregular shaped bottom surface for the molding said eggs), said yolk being allowed to settle in the second depression having a

rounded region (e.g. 13c), said eggs then being cooked after moving said molds to a heating area, and said eggs being cooled (e.g. frozen). In order to package, consumer same, etc., it is inherent that said eggs would be removed from the molds as also called for in claim 55.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 55 and 56 are rejected under 35 USC 103(a) as being unpatentable over Dunckel taken together with any one of Davis, Cunningham, and Shimizu.

Dunckel discloses a process wherein eggs are mechanically and automatically conveyed and subjected to breaking with knives (92) wherein the contents of same (including yolks) are deposited into a plurality of molds (each having a symmetrical shape) all connected, said eggs then being cooked after moving said molds to a heating area, and said eggs being removed from said pans, and subsequently cooled. Dunckel further discloses an embodiment wherein the yolks are broken through mixing to create a scrambled egg mixture that is deposited in the molds (cols. 2-4; Figures).

The claims further call for said mold to comprise a first depression and a second depression within said first. However, such molds for eggs are notoriously well known to aid in providing demarcation between the yolk and white portions as taught, for example, in any one of Davis, Cunningham, and Shimizu. It would have been

obvious to one having ordinary skill in the art at the time of the invention to have included same to provide a product having a particular desired aesthetic (uniformity, shape, color distribution, etc.)

6. Claims 1, 2, 12-14, 21, 59-62, 64, 65, 67, 68, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stearns et al taken together with WO 87/03171.

Stearns et al (e.g. Fig. 2; cols 2 and 3) discloses a process wherein the contents eggs (yolks previously broken) are deposited into a plurality of molds (e.g. irregular shaped) wherein said molds are arranged side by side as called for in claim 12, said eggs then being cooked in said molds, and subsequently cooled (e.g. frozen). It should be noted that the egg yolks would inherently be ruptured when falling through a propeller type mixer wherein it is considered expected that the propellers have sharp edges and are contained within an orifice area of the mixer (Example 1).

The claims further call for the eggs being dropped through a plate having sharp inwardly protruding edges. WO 87/03171 teaches a method of breaking egg yolk sacs using pins (e.g. 100) which are sharp and inwardly protruding. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such yolk breaking step in order to facilitate easier subsequent mixing of yolks and whites. It should be noted that if the rupturing means of pins are not considered to be inwardly protruding edges, WO 87/03171 further discloses the use of equivalent means to achieve such purpose, and clearly the use of sharp knives or other protruding cutters would provide the same rupturing action.

The claims further call for the use of plural edges within a single plate. However, absent a showing of unexpected results, it would have been further obvious to have increased the number of such pins to increase the number of ruptures as a result effective variable.

7. Claims 1, 2, 12-14, 18, 20, 59-68, 71-73, and 75-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu taken together with WO 87/03171 and further in view of any one of Stearns et al, Stier, and Matter.

The claims further call for said molds to be irregularly shaped. However, it is well known to provide irregularly shaped molds for preparing eggs as set forth in Stearns et al (col. 3, lines 1-19), Stier (see Figures), and Matter (see Figures). It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided such shaping molds as a matter of preference with regard to the desired aesthetics of the final product.

The claims further call for the depression of the mold being asymmetric. However, such modification in shape would have been further obvious as a matter of preference with regard to the desired aesthetics of the final product.

The claims further call for the eggs being dropped through a plate having sharp inwardly protruding edges. WO 87/03171 teaches a method of breaking egg yolk sacs using pins (e.g. 100) which are sharp and inwardly protruding. It would have been obvious to one having ordinary skill in the art at the time of the invention to have incorporated such yolk breaking step to provide for better distribution of the yolk and egg white in the molds of Shimizu. In other words, without providing the rupture of the

yolk sac, it is expected that there would be instances where the yolk sac would bridge two mold depressions. By breaking the yolk sac, the yolk and white would be free to better separate between the two mold depressions. It should be noted that if the rupturing means of pins are not considered to be inwardly protruding edges, WO 87/03171 further discloses the use of equivalent means to achieve such purpose, and clearly the use of sharp knives or other protruding cutters would provide the same rupturing action.

The claims further call for the use of plural edges within a single plate. However, absent a showing of unexpected results, it would have been further obvious to have increased the number of such pins to increase the number of ruptures as a result effective variable.

It should be noted that Shimizu further discloses molds that have flat bottom depressions and beveled edges surrounding said depressions as called for in claims 76 and 77 (see Fig. 2).

8. Claim 74 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu taken together with WO 87/03171 and Beale et al and further in view of any one of Stearns et al, Stier, and Matter.

Claim 74 further calls for said mold to have a planar surface that is formed of a non-stick, food grade material. However, it is notoriously well known to provide cooking utensils having such attributes as taught, for example, by Beale et al (e.g. Abstract). it would have been obvious to one having ordinary skill in the art at the time of the invention to have employed same in the mold of Shimizu to provide easier removal of

the molded food article and to ensure that the coating material itself is consumably safe if particles of same should fall into the food product.

9. Claim 21 and 24-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 87/03171.

WO 87/03171 discloses a process wherein egg yolks and whites from cracked eggs are dropped into a device wherein said device comprises multiple orifices (for each egg; e.g. claim 28) having sharp inwardly protruding edges (via the pin 100 or its equivalent, page 12) which rupture the egg yolk sacs (e.g. Figure 10D).

The claims further call for the eggs being dropped through a plate having sharp inwardly protruding edges. WO 87/03171 teaches a method of breaking egg yolk sacs using pins (e.g. 100) which are sharp and inwardly protruding. It should be noted that if the rupturing means of pins are not considered to be inwardly protruding edges, WO 87/03171 further discloses the use of equivalent means to achieve such purpose, and clearly the use of sharp knives or other protruding cutters would provide the same rupturing action.

The claim further calls for the use of plural edges within a single plate. However, absent a showing of unexpected results, it would have been further obvious to have increased the number of such pins to increase the number of ruptures as a result effective variable.

#### ***Applicant's Arguments***

10. Applicant's arguments filed 12/20/07 have been fully considered but they are not persuasive.

Applicant argues that the orifice of WO 87/03171 with its pin is not equivalent to or obvious in view of the sharp protruding inward edges in the instant invention and that the sharp protruding inward edges of the instant invention would provide the advantage of providing a desired amount of yolk spread that would not be available using the pin treatment in WO 87/03171. However, the existence of pins or their equivalent (such as a knife) would provide the particular claimed "sharp protruding edges" of the orifice as called for in the instant claims wherein the egg yolk is ruptured. It should be noted that the instant claims do not call for providing a result, such as spreading, etc. other than rupturing of the egg yolk sacs which is achieved in the process of WO 87/03171 as set forth in the rejection above.

All other arguments have been addressed in view of the rejections as set forth above.

***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action, particularly due to the addition of numerous claims and the amendment to claims 1, 59, and 71 to dropping an egg through a device to break the yolk sac; previous limitations involved only the dropping of the egg yolk to break the egg yolk sac. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Anthony Weier  
March 25, 2008